

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 1 OF 2003.

Lt. Col. K.S. Row (Since deceased) by his LRs.:

(a) Mr. Deepak Row,
r/o H. No. 64,
Defence Colony,
Alto Porvorim,
Bardez Goa.

... Petitioner.

Versus

1. Mr. Jorge de Gouveia
Pinto (since deceased)
by his LRs.

(a) Mrs. Maria Lizette D'Abreu
e Gouveia Pinto,

(b) Mr. Jose Maria De Gouveia
Pinto,

(c) Mrs. Maria Christina Andrea,

(d) Renuka de Gouveia Pinto,
all r/o Rua Minguel Vincent
D'Abreu, Behind Head Post
Office, Panaji, Goa.

2. The Addl. Dy. Collector,
Authorized Officer and Rent
Controller, Panaji, Goa.

3. Administrative Tribunal Goa,
Coelho Pereira Bldg.,
Panaji, Goa.

4. Mr. Dwarkanath Row,

5. Mrs. Anurangini Row,
Both r/o H. No. 64, Defence
Colony, Alto Porvorim,
Bardez Goa.

... Respondents.

Mr. J. Godinho, Advocate for the Petitioner.

Mr. R.G. Ramani, Advocate for the Respondents 1(a) to
(c).

Mrs. W. Coutinho, Government Advocate for the Respondent
No. 2.

Coram: P.V. HARDAS, J.

Date: 23rd January 2003.

ORAL JUDGMENT.

Rule. By consent of parties, rule made
returnable forthwith.

2. This petition has been filed against the Judgment passed by the Administrative Tribunal, Goa, dated 25th November 2002, in Eviction Revision Application No. 25 of 2002, dismissing the revision filed by the present petitioner and, thereby, confirming the Order, passed by the Additional Rent Controller, Panaji, dated 4th January 2001.

3. The facts in brief necessary for the decision of the present petition are set out hereunder:-

The present petitioner is a tenant, whose eviction is sought by the present respondents in the proceedings filed before the Additional Rent Controller on the grounds of non-payment of rent and that the present petitioner has continuously ceased to occupy the suit premises from 1st February 1983 without reasonable cause. Thereafter, the present respondents amended the application and urged the ground of sub-letting also. The present petitioner, who is respondent in the application for eviction before the Additional Rent Controller, filed an application praying that he may be permitted to rely on 13 documents. The Additional Rent Controller by his Order dated 4th January 2001 permitted the present petitioner to produce on record (i) electricity bills, (ii) water bills, (iii) telephone bills and (iv) record and proceedings in Rent Case No.

64/83. The Additional Rent Controller did not permit the production of the following documents (i) certificate of registration with Tourism Department, (ii) registration certificate of Establishment from Labour Department, (iii) licence from P.M.C., (iv) agents licence 14/11/95, (v) register of wages January 1997 till date, (vi) letter of appointment to Subhas Haldankar, (vii) letter of appointment to Kushali P. Kuttikar, (viii) wage slips and (ix) letter dated 15.11.1995. During the course of hearing of this petition Mr. Godinho, the learned counsel appearing on behalf of the petitioner has stated that he does not press for the relief of production of letter dated 15th November 1995. The reason given by the Additional Rent Controller for refusing the production of certain documents is that except the documents which are allowed to be produced, the other documents have come into existence only after the amendment sought by the present respondents. The learned Additional Rent Controller also proceeded on the ground that Rule 2, of Order XIII of the Code of Civil Procedure states that documents which have not been produced as per Rule 1, should not be received in subsequent stage of proceedings by the Court unless good cause was shown for production thereof. The learned Administrative Tribunal, before which the revision was carried by the present petitioner against the Order of the Additional Rent Controller,

dismissed the revision on the grounds that the petitioner moved the application for production of the documents at a belated stage, it was moved only for the purpose of delaying the proceedings and that no illegality had been committed by the Rent Controller.

4. Mr. Godinho, the learned counsel appearing on behalf of the petitioner, has urged before me that the Additional Rent Controller has allowed the production of some documents while refusing the production of other documents. According to him, the documents, which the petitioner is not allowed to produce, are vital for his defence in meeting the additional ground, which has been urged by the present respondents after amendment. Mr. Ramani, learned counsel appearing on behalf of the respondents/landlords, has urged before me that the petitioner in his application has not given any reason as to why these documents could not be produced by him earlier. He has, therefore, supported the Orders of the two Courts below. According to Mr. Ramani the learned counsel appearing on behalf of the respondents, these documents have been "manufactured" by the present petitioner to suit the defence which has been taken by him.

5. The learned Additional Rent Controller has permitted the petitioner to produce some of the

documents. According to the Additional Rent Controller, the documents permitted to be produced were in existence prior to the amendment of the main eviction application. Thus, these documents were in the possession of the petitioner and, despite the fact that the petitioner did not give any satisfactory reason for non-production earlier, the learned Additional Rent Controller had permitted the production of the said documents. The documents which were not permitted to be produced by the Additional Rent Controller have come into existence subsequent to the amendment moved by the present respondents. At this preliminary stage the production of the documents cannot be refused on the ground that the documents have come into existence subsequently or that the documents are "manufactured". The reason in support for not permitting the petitioner to produce the documents is certainly not sustainable. The Administrative Tribunal has not addressed itself to this question at all. There was no valid justification for the Additional Rent Controller to permit the petitioner to produce on record only some of the documents while declining to grant permission to produce the other documents. Whether the documents are "manufactured" is a question which has to be decided on the basis of the evidence tendered by the parties. Once the Additional Rent Controller has permitted production of some documents, there was no justifiable reason for refusing

permission to the petitioner to produce the other documents. It is true that the proceedings have been pending for a considerable length of time. But, since the Additional Rent Controller has permitted production of some of the documents, I see no reason why the petitioner should be refused permission to produce the other documents. Mr. Godinho has submitted that he does not press for production of the document, that is, letter dated 15th November 1995. I am of the considered opinion that the petitioner should be permitted to produce the documents as per the list, except the document, that is, letter dated 15th November 1995. The learned Additional Rent Controller has already permitted the petitioner to produce on record four documents and, according to me, the petitioner should be allowed to produce the other documents in the list, except the letter dated 15th November 1995.

6. In the result, therefore, the petition is allowed. The impugned Order of the Additional Rent Controller disallowing the petitioner to produce the other documents is, hereby, quashed and set aside as also the Order of the Administrative Tribunal. The petitioner is allowed to produce the other documents mentioned in the list of documents, except the letter dated 15th November 1995. However, since the petitioner has moved the application at a belated stage, according

to me, the ends of justice would be met by directing the petitioner to pay to the respondents costs of Rs. 5,000/-. Payment of costs is a condition precedent for the petitioner producing the documents as per the list. Rule is made absolute in the above terms.

(P.V. HARDAS)
JUDGE.

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